

**ADASHI SYSTEMS, LLC STANDARD TERMS AND CONDITIONS OF SALE**

THE TERMS AND CONDITIONS SET FORTH BELOW, ALONG WITH THE ATTACHED ADDENDUM, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN ADASHI SYSTEMS, LLC ("ADASHI") AND CUSTOMER WITH RESPECT TO THE PURCHASE OF SOFTWARE ("PRODUCTS"), MAINTENANCE SERVICES ("MAINTENANCE") AND/OR CONSULTING SERVICES ("SERVICES") IDENTIFIED IN THE ATTACHED ADASHI QUOTE UNLESS A SIGNED AND EFFECTIVE WRITTEN AGREEMENT FOR THE PURCHASE OF SUCH PRODUCTS, MAINTENANCE AND/OR SERVICES IS IN EFFECT BETWEEN CUSTOMER AND ADASHI. IN THE EVENT OF A CONFLICT BETWEEN SUCH AN AGREEMENT AND THESE STANDARD TERMS AND CONDITIONS OF SALE, SUCH AGREEMENT SHALL CONTROL.

1. **CUSTOMER ORDER.** Customer may accept the attached Adashi offer to sell ("Quote") by issuing a purchase order in response to such Quote (each accepted Quote constitutes a "Customer Order"). Customer shall be deemed to unconditionally accept these terms and conditions by issuing such purchase order. No terms and conditions specified or preprinted on any Customer purchase order or other form of acceptance shall add to or modify these terms and conditions except as otherwise provided in the attached Addendum. Baltimore, Maryland shall be the acceptance and fulfillment location for any Customer Order.
2. **PRICES AND TAXES.** All Quotes are valid for sixty (60) days unless otherwise specified. All prices are quoted in U.S. Dollars. All invoice prices are those specified in the Quote accepted by Customer. Prices do not include any applicable sales or use taxes unless otherwise specified.
3. **GSA SCHEDULE PRICING.** GSA discount pricing under Adashi Schedule 70 Contract No. pending is available to qualified U.S. federal, state, and local government purchasers.
4. **PAYMENT AND INVOICING TERMS.** Payment in full of all invoices is due thirty (30) days from date of invoice. Payment terms are subject to Customer maintaining a credit status acceptable to Adashi. Invoices for Products are issued upon shipment of Products. Invoices for Services are invoiced at the conclusion of any Service, unless otherwise specified. Customer remains primarily responsible and liable for complete and timely payment of all invoices issued hereunder. Customer may make payment with Visa or Mastercard at Adashi's discretion.
5. **SHIPPING AND DELIVERY.** All shipments by Adashi are F.O.B. destination, freight prepaid. Title and risk of loss to Products shall pass to Customer upon delivery. Adashi shall endeavor to initiate shipment and schedule delivery as close as possible to Customer's requested delivery dates and Customer acknowledges that any delivery dates provided by Adashi are estimates only. Adashi shall not be liable for any delay in delivery or for failure to give notice of such delay.
6. **SECURITY INTEREST.** Customer hereby grants and Adashi retains a security interest in all Products purchased hereunder, and such security interest is released when payment in full

is received by Adashi.

7. **CANCELLATION OF ORDERS.** No Customer Order for Products or Maintenance may be modified without Adashi's consent. Customer Orders may be cancelled upon ten (10) days prior written notice. Customer will pay for all Services delivered through the date of cancellation.
8. **RETURN POLICY.** All sales are final other than for Products that do not meet specifications or that are not included in the Customer Order. Customer must notify Adashi of any damaged or defective Products or discrepancy in shipment quantity or type.
9. **WARRANTY.** All Products and Maintenance purchased hereunder are subject to the warranties provided by the manufacturer. Adashi hereby transfers to Customer such transferable warranties Adashi receives from the applicable manufacturer as legally permissible. Adashi warrants that its Services will be performed by qualified individuals in a professional and workmanlike manner conforming to generally accepted industry standards and practices. Services are supported against defects in workmanship for thirty (30) days after acceptance by the Customer. ADASHI MAKES NO WARRANTY AS TO THE RESULTS OF ANY SERVICES PROVIDED. EXCEPT AS SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND MAINTENANCE ARE PROVIDED "AS IS" AND ADASHI DISCLAIMS ANY AND ALL WARRANTIES AND REMEDIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE AND NON-INFRINGEMENT.
10. **LIMITATION OF LIABILITY.** ONLY TO THE EXTENT PERMISSIBLE BY TENNESSEE LAW, NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF ADASHI UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO MONEY PAID TO ADASHI UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY AND IN THE CASE OF DAMAGES RELATING TO ANY ALLEGEDLY DEFECTIVE PRODUCT SHALL, UNDER ANY LEGAL OR EQUITABLE THEORY, BE FURTHER LIMITED TO THE PURCHASE PRICE PAID BY CUSTOMER FOR SUCH PRODUCT. IN NO EVENT SHALL ADASHI BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST DATA, OR ANY OTHER INDIRECT DAMAGES EVEN IF ADASHI HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.
11. **SERVICES.** Customer may purchase Adashi Services identified in a Quote. Custom project-based services require a statement of work between the parties and are not governed by these terms and conditions. All prices for Services in the attached Quote are based on work being performed during normal business hours (Monday through Friday). Security arrangements and access for Adashi at the Customer's location, if required, is the responsibility of Customer. Other than Customer Content, Adashi retains ownership rights to all intellectual property, including but not limited to all methodologies, tools, techniques or software, used or developed by Adashi during and as a result of Services provided

hereunder. "Customer Content" means the specific data that results from the delivery of the Service and that is unique to the Customer, including Customer's systems design and configuration specifications and related reports.

- 12. MAINTENANCE.** Software maintenance and support is included at no charge for the first twelve months after acceptance by the City. After the first year, the annual price for software maintenance and support is 20% of the license price then in effect unless otherwise specified. Software maintenance and support includes all maintenance releases and unlimited telephone support during regular business hours 8:30 AM to 5:00 PM Eastern Time, Monday through Friday, excluding holidays.

A grace period of six months is automatically granted following the expiration of software maintenance and support. If maintenance and support is renewed during the grace period, the renewal will take effect on the previous expiration date. If it is not renewed during the grace period, licensee will no longer have the option to purchase maintenance and support; in that event, licensee will have to purchase a new software license to obtain maintenance and support, including future updates.

- 13. SOFTWARE.** Any software delivered under this Agreement is subject to the license terms provided with it. All software license terms are established directly between the Customer and the owner or licensor of the software. Prices do not include software training except as otherwise specified.

- 14. GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Tennessee.

- 15. MISCELLANEOUS.** These terms and conditions, along with the attached addendum represents the complete agreement with respect to the Customer Order, and may be amended only by a writing executed by both parties. The titles are merely guides to the reader; if a title conflicts with content, the content shall prevail. If any provision of these terms and conditions is held to be unenforceable, such provision shall stricken or be reformed to the extent necessary to make it enforceable, and the balance of the terms and conditions shall remain in full force and effect.

## **COMPUTER SOFTWARE LICENSE AGREEMENT**

**BY INSTALLING THIS SOFTWARE, YOU CONSENT TO BE BOUND AND BECOME A PARTY TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ITS WARRANTY DISCLAIMERS, LIMITATION ON LIABILITY, INDEMNIFICATION, AND ARBITRATION CLAUSES. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST PERMANENTLY REMOVE AND DESTROY THE SOFTWARE AND ANY COPIES FROM YOUR FILES, COMPUTERS, STORAGE DEVICES, AND MEDIA; CONTACT ADASHI SYSTEMS, LLC FOR A FULL REFUND OF LICENSE FEES PAID.**

**SCOPE OF LICENSE GRANT.** Subject to your compliance with this Agreement, Adashi Systems, LLC (Adashi) grants to you a limited, revocable, non-exclusive license to use the Software in the manner described herein. The "Software" as the term is used herein includes the computer program consisting of source code, object code, and executable code, the media upon which it is distributed, any third-party software components and libraries supplied with the program, as well as the accompanying documentation in both electronic and paper format. U.S. users: you may install and use the Software on any single computer located within the U.S. and only in connection with your official duties as an Emergency Response Provider as defined in the Homeland Security Act 6 U.S.C. 101. International users: you may install and use the Software on any single computer in accordance with both the terms and conditions of a valid export control license issued to you (if required by U.S. law) and those contained herein.

If you have purchased the Backup License Option, you may install and use a backup copy of this Software on another computer. Your use of the Software is restricted to executable code only. You may not: permit other individuals to use the Software except under the terms herein; permit concurrent use of the Software; modify, translate, reverse engineer, decompile, recompile, disassemble (except and solely to the extent an applicable statute expressly and specifically prohibits such restrictions), or create derivative works based on the Software; copy the Software; rent, lend, lease, grant a security interest in, or otherwise transfer rights to the Software; use any included third-party software components supplied with the Software for any purpose other than in connection with your permitted use of the Software; or, remove or obscure any proprietary notices, restrictions or labels on the Software.

**TITLE.** Except for third-party software components supplied with the Software, all title, ownership rights, and intellectual property rights in the Software shall remain exclusively in Adashi. Title to all third-party software components included with the Software shall remain exclusively in the licensor of those software components. The Software is protected by copyright and other intellectual property laws and by international treaties.

**TERMINATION.** This Agreement and the license granted hereunder will terminate automatically if you fail to comply with the limitations described herein. Upon termination, you must permanently remove and destroy the Software and any copies from your files, computers, storage devices, and media. You further agree that you will certify in writing, upon request by Adashi, that you have removed and destroyed same.

**CONSIDERATION.** You agree that your limited right to use the Software under this Agreement, along with the other good and valuable consideration referenced in this Agreement, constitute good, sufficient, and legal consideration for this Agreement.

**LIMITATION OF LIABILITY. ONLY TO THE EXTENT PERMISSIBLE BY TENNESSEE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL ADASHI OR ANY OF ITS THIRD-PARTY SOFTWARE SUPPLIERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN NO EVENT WILL ADASHI OR ANY OF ITS THIRD-PARTY SOFTWARE SUPPLIERS BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE AMOUNT ADASHI RECEIVED FROM YOU FOR A LICENSE TO THE SOFTWARE, EVEN IF ADASHI OR ANY OF ITS THIRD-PARTY SOFTWARE SUPPLIERS SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM ADASHI' NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS THIRD-PARTY SOFTWARE SUPPLIERS. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.**

**DISCLAIMER OF WARRANTY.** The Software is provided "AS IS", without warranty of any kind, including without limitation the warranties that the Software is free of defects, or non-infringing. ADASHI AND ITS THIRD-PARTY SOFTWARE SUPPLIERS EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The entire risk as to the quality and performance of the Software is borne by you. Should the Software prove defective in any respect, you and not Adashi assume the entire cost of any service and repair. This disclaimer of warranty constitutes an essential part of this Agreement. No use of the Software is authorized hereunder except under this Disclaimer.

**GOVERNMENT INFORMATION.** You acknowledge that much of the technical information and data contained in the Software were collected, compiled, and/or created by various U.S. Government agencies which are solely responsible for their accuracy, completeness and content. Further, Adashi makes no representation as to the accuracy or usefulness of the information. Adashi makes no claim to ownership or control of that information. You understand and agree that the sole purpose of this Software is to make the government-provided information more readily available to those who need to make decisions concerning various public safety matters. You have been advised and understand that the quality of the information presented by this program is totally dependent on the accuracy of that information and the skill of the person providing the input. You must assess and take local conditions into full account when applying the results of the Software to real-world situations. Local conditions include current and prevailing wind and weather patterns, terrain, source characteristics and other facts that are or can be known to you, which are not and cannot be known to Adashi. Accordingly, you understand and agree that you assume all responsibility for decisions made using the Software and that you shall remain fully and solely responsible for your decisions.

**U.S. GOVERNMENT END USERS.** The Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those restricted

rights set forth herein.

**EXPORT RESTRICTIONS.** The Software contains technical data whose export is restricted by the Arms Export Control Act (Title 22 U.S.C. Sec. 2751 et seq.) or Executive Order 12470. Violators of these export laws are subject to severe criminal penalties. You agree that you will comply fully with all relevant export laws and regulations of the U.S. to assure that the Software is not exported, directly or indirectly, in violation of U.S. law. In the event the terms and conditions of any export control license issued in connection with your use of the software conflict with those contained herein, the terms and conditions of the export control license shall take precedence.

**MISCELLANEOUS.** This Agreement, along with the attached addendum represents the complete agreement concerning the license granted hereunder, and the Software, and may be amended only by writing executed by both parties. The titles are merely guides to the reader; if a title conflicts with content, the content shall prevail. If any provision of this Agreement is held to be unenforceable, such provision shall stricken or be reformed to the extent necessary to make it enforceable, and the balance of this Agreement shall remain in full force and effect. This Agreement shall be governed by the laws of the State of Tennessee.

## **Addendum**

### **COF Contract No. 2018-0232**

This addendum shall modify and supersede the Adashi System, LLC Standard Terms and Conditions of Sale (the "Agreement") attached hereto. The Agreement, together with this Addendum and the attached documents, constitutes the entire agreement ("Contract"). Should any terms and conditions contained herein differ, then these terms and conditions shall supersede.

1. **Time of the Essence.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.
2. **Confidentiality and Proprietary rights.** Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City's users of the System; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
3. **Derivative Works.** To the extent that the Agreement contains Vendor's reservation of rights, such definitions and limitations are superseded by the following: "Derivative Work" means a program that is based on or derived from one or more existing programs or components. If the original software is modified to create a new program, a derived work is created. If the original software was designed to accept plug-ins or drivers using a defined mechanism, such a driver or plug-in does not form a derived work. Linking to a library in the way it was designed to be interfaced with, does *not* constitute deriving a work. "Derivative work" is *not* the data that the Licensee inputs, manipulates, modifies or otherwise improves, nor the images resulting therefrom.
4. **Warranties/Limitation of Liability/Waiver.** The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
5. **Arbitration/Mediation.** No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
6. **No Taxes, No Interest Payments.** As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred. The City does not agree to pay any interest for late payments, having agreed to pay in a timely manner.
7. **Licensed users/"seats".** If and whenever the Agreement defines or refers to "licensed users" such shall be read to allow installation of the program to allow efficient dissemination of the licensed program, such as disk mastering and other methods of mass installation, without exceeding the licensed number of seats.
8. **Notices.** Any notice provided pursuant to the Contract, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid,

## Addendum

### COF Contract No. 2018-0232

certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which the Agreement or this Addendum may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin  
Attn: Todd Horton  
109 Third Ave. South  
P.O. Box 305  
Franklin, TN 37065-0305  
FAX: 615/550-6613

In the case of Vendor:

Adashi Systems, LLC  
Attn: Alex M. Menkes  
101 North Haven Street, Suite 301  
Baltimore, MD 21224  
(877)563-9980

9. **Waiver.** Neither party's failure or delay to exercise any of its rights or powers under the Contract will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power. Vendor agrees to waive any convenience fee for the use of payment by purchasing card.
10. **Severability.** If any term or provision of the Contract is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract will not be affected.
11. **Precedence.** In the event of conflict between this Addendum and the provisions of the Agreement, or any other contract, agreement or other document to which the Agreement or this Addendum may accompany or incorporate by reference, the provisions of this Addendum will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Addendum.
12. **Indemnification.** Vendor agrees to indemnify and save the Government of Franklin, the City of Franklin and individual, on or off duty, officers, and employees of the City of Franklin, harmless from any and all losses, damages and expenses, including court costs and reasonable attorneys' fees, by reason of any loss, whatsoever, arising out of or relating to or in consequence of the negligent act, error or omission, only to the extent provided by law, of the Vendor during work done in connection with this Contract, excepting only such losses as shall be occasioned solely by the negligence of the Government of Franklin, the City of Franklin and individual, on or off duty, officers, and employees of the City of Franklin.
13. **Entire Agreement.** These Standard Terms and Conditions, including any contract, agreement or other document which these Standard Terms and Conditions may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of these Standard Terms and Conditions. The terms and conditions of these Standard Terms and Conditions may not be changed except by an amendment expressly referencing these Standard Terms and Conditions by section number and signed by an authorized representative of each party.
14. **Additions/Modifications.** If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific



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clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

15. Assignment/Subcontracting. Neither party may assign any rights or obligations under these this Contract, without the prior written consent of the other party. This Contract will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Vendor may subcontract any portion of the work only with the prior consent of the City, but such subcontracting will not relieve Vendor of its duties under this Contract.
16. Applicable Law; Choice of Forum/Venue. The Contract constitutes the entire agreement and is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, Tennessee.
17. Breach. Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.
18. Survival. This Addendum shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference.

ADASHI SYSTEMS, LLC

By:  10/23/2018


Alex M. Menkes, CEO

CITY OF FRANKLIN:

By: 

Eric S. Stuckey, City Administrator

Approved as to form:



Tiffani M. Pope, Staff Attorney